IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLN.NO.1548 OF 2007

1. Shri.Laxman Dehu Warghade
2. Shri.Baban Budhaji Warghade
3. Shri.Tanaji Budhaji Warghade
4. Shri.Navnath Budhaji Warghade
5. Shri.Subhash Pandurang Warghade
6. Shri.Vitthal Janu Thamke
   All are r/o Weluk, Tal.Murbad
   Dist.Thane ..Applicants

Vs.

State of Maharashtra ..Respondents

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Mr.S.V.Kotwal Advocate for Applicants
A.P.P. for the State
Mr.M.B.Shirsat Advocate for Intervenor-original complainant

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CORAM: SMT.V.K.TAHILRAMANI,J.
DATE : JUNE 18, 2007

P.C.

1. Heard the learned advocate for the applicants, the learned A.P.P. for the State and the learned advocate for the Intervenor-complainant.

2. The applicants are seeking anticipatory bail in C.R.No.I-10 of 2007 of Tokawade Police Station, Dist.Thane. The said case is mainly under Section 302 of IPC.

3. It is the prosecution case that the applicant no.1 Laxman called out to the others to catch hold of Dhananjay (deceased) and Raghunath (injured). Thereupon non-applicants Hanumant, Janardhan, Kantilal and Nilesh came running and started assaulting Dhananjay and Raghunath with wooden logs. At that time, co-accused Janardhan assaulted Dhananjay on the neck with knife. Dhananjay fell down, however, those persons continued assaulting him. It is the case of the prosecution that at that time, the applicants came there stating that Dhananjay should be killed and they assaulted Dhananjay and Raghunath.

4. In the said incident, Dhananjay lost his life and Raghunath came to be injured. I have perused the F.I.R. and statement of injured Raghunath. Raghunath has stated that the applicant No.1-Laxman, applicant No.2-Baban, applicant No.3-Tanaji, applicant No.5-Subhash and applicant No.6-Vitthal assaulted him and the deceased Dhananjay. Mr.Kotwal submitted that in the FIR no role of assaulting Dhananjay or Raghunath is attributed to any of the applicants and in the FIR it is only stated that after Dhananjay was assaulted by co-accused, the applicants came there

stating that Dhananjay should be killed.

5. As far as the statement of Raghunath which implicates the applicants and wherein role is attributed to the applicants of assaulting Dhananjay and Raghunath is concerned, Mr.Kotwal submitted that statement of Raghunath came to be recorded on 31.3.2007 whereas the incident had taken place on 29.3.2007 which shows that the present applicants have been falsely implicated as an after thought. However, at this stage, I am not inclined to give much importance to this aspect because names of applicant Nos.1 to 3, 5 and 6 have also been stated in the F.I.R. which was lodged on the day of the incident. This F.I.R. was lodged first in point of time i.e. prior to the complaint which was lodged by the co-accused of the present applicants i.e. the cross complaint was lodged later. In the FIR it is reflected that applicant Nos.1 to 3, 5 and 6 came and started shouting that Devanand should be killed just after he was assaulted by the other accused. This shows that they shared the common intention of the other accused to kill Dhananjay.

6. As far as applicant No.4-Navnath is concerned,

though his name is stated in the F.I.R., no role has been attributed to him of assaulting either the deceased or the injured. Moreover, his name is not mentioned by Raghunath nor any role is attributed by Raghunath to him. Hence, as far as applicant No.4-Navnath is concerned, I am inclined to grant anticipatory bail.

7. In the event of arrest, the applicant no.4-Navnath Budhaji Warghade to be released on bail in the sum of Rs.10,000/- (Rs.ten thousand only) with one or two sureties to make up the said amount in C.R.No.I-10 of 2007 of Tokawade Police Station, Dist.Thane. The applicant No.4 shall report to the concerned Police Station from 20.6.2007 for a period of eight days from 10 a.m. to 2 p.m. and thereafter once in a fortnight till the conclusion of trial.

8. Application qua applicant Nos.1 to 3, 5 and 6, is rejected.

9. The learned Judge shall not be influenced by any of the observations made in this order while deciding the bail application of the applicants or while deciding the trial.

10. Application is disposed of.

[Smt. V.K.Tahilramani, J.]